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No. 07-

IN THE

Supreme Court of the United States

RIDGE CHRYSLER JEEP, LLC, DOING BUSINESS AS MARQUETTE CHRYSLER JEEP, AND SALES, INCORPORATED, DOING BUSINESS AS DODGE MIDLOTHIAN,

Petitioners

v.

DAIMLERCHRYSLER FINANCIAL SERVICES AMERICAS LLC, FORMERLY KNOWN AS DAIMLERCHRYSLER SERVICES NORTH AMERICA LLC,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Seventh Circuit erred in applying the less stringent preponderance of the evidence standard, inconsistent with cases from the First, Second, Third, Eighth and D.C. Circuits rather than the more rigorous clear and convincing evidence standard, in determining whether plaintiffs' conduct warranted dismissal as a sanction.

2. Whether the Seventh Circuit erred in affirming the dismissal of the present case as a discovery sanction, rather than allowing the cause to proceed to trial and be decided on the merits by a jury.

STATEMENT PURSUANT TO RULE 29.6

Petitioners Ridge Chrysler Jeep, LLC, d/b/a Marquette Chrysler Jeep, and Sales, Inc., d/b/a Dodge Midlothian have no parent corporations or publicly held companies owning 10% or more of the corporations' stock.

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Petitioners, Ridge Chrysler Jeep, LLC, doing business as Marquette Chrysler Jeep, and Sales, Incorporated, doing business as Dodge Midlothian (hereinafter "petitioners"), respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit (hereinafter "Seventh Circuit"), entered in this cause on February 20, 2008, as well as the Seventh Circuit's order denying petitioners' Petition for Rehearing, entered on March 17, 2008.[1]

CITATIONS TO OPINIONS BELOW

The decision of the Court of Appeals for the Seventh Circuit is reported at 516 F.3d 623 (7th Cir. 2008), and is reprinted in full in the appendix hereto at Appendix A, 1a –9a.

The Order of the United States District Court for the Northern District of Illinois, Eastern Division (V. Kendall), is reported at 2006 WL 2808158 (N.D. Ill. 2006), and is reprinted in full in the appendix hereto at Appendix B, 10a-43a

STATEMENT OF JURISDICTION

Petitioners seek review of the decision of the Seventh Circuit, entered on February 20, 2008, affirming the District Court's dismissal of Petitioners' claims with prejudice, and awarding costs. The Seventh

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[1] Counsel for Petitioners wish to acknowledge the assistance in the preparation of this Petition For Writ Of Certiorari of law student Victoria Moore.

Circuit found that the District Court did not abuse its discretion in determining that Petitioners' conduct warranted dismissal with prejudice as a sanction. The Seventh Circuit denied Plaintiffs' Petition for Rehearing With Suggestion for Rehearing *En Banc* on March 17, 2008. The District Court had federal question jurisdiction over the present matter under 28 U.S.C. § 1331, as the Complaint alleged violations of the Automobile Dealer's Day in Court Act, 15 U.S.C. § 1221, *et seq.* The District Court also had diversity jurisdiction under 28 U.S.C. § 1332, as all Petitioners are citizens of Illinois, Respondent is a citizen of Delaware and Michigan, and the amount in controversy exceeds $75,000. The Seventh Circuit had jurisdiction to review the District Court's ruling under 28 U.S.C. § 1291 as an appeal of a final decision from the District Court. This Court has jurisdiction to review the Seventh Circuit's decision under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Fed. R. Civ. P. 37 – see Appendix D, 96a-98a for applicable text.

STATEMENT OF THE CASE

This appeal arises out of a breach of contract action, brought by Petitioners Ridge Chrysler Jeep L.L.C. and Sales, Inc. ("Petitioners" or "Ridge"), against Respondent Daimler Chrysler Services North America, L.L.C. ("Respondent" or "Chrysler"). (R. Doc. 1). Chrysler filed a counterclaim against Ridge, adding Gerald W. Gorman ("Gorman") and Elizabeth A. Gorman, his wife, as counter-defendants. (R. Doc. 13).

In February 1999, Gorman purchased the Marquette Chrysler Jeep dealership ("Marquette") located at 6515 South Western Avenue in Chicago, Illinois. The customer base of Marquette was roughly ninety percent (90%) African-American. Prior to this purchase, Gorman had been affiliated with Chrysler Corporation as a Dodge dealership owner since June 1990. (R. Doc. 1, at ¶15).

In September 2000, Gorman purchased the Dodge of Midlothian dealership ("Midlothian") at 14500 South Cicero Avenue in Midlothian, Illinois, just outside of Chicago. The customer base of Midlothian was roughly thirty percent African-American. (R. Doc. 1, at ¶16). Marquette and Midlothian (the "Dealerships") entered into contracts with Chrysler Financial to inventory and sell new and used vehicles manufactured by DaimlerChrysler. (R. Doc. 1, at ¶17; R. Doc. 12, at ¶2). Both Dealerships signed "Financing Agreements" with Defendant Chrysler whereby Chrysler agreed to buy sales contracts from the dealerships. When Chrysler agreed to buy these sales contracts, it provided financing for the dealership customers' vehicle purchases. (R. Doc. 1, at ¶18; R. Doc. 12, at ¶2). Chrysler and the Dealerships also entered into various other financing agreements that, the Complaint alleges, worked impossible hardships on the Dealerships because they were the result of Chrysler's racially biased attitude toward the Dealerships' customer base. (R. Doc. 1, at ¶15-48). This attitude was conveyed to Gorman and others in his

employ by two of Chrysler's Zone Managers, who made such incendiary statements as:

> We found out these 'mulignons' [a derogatory racial slur] were getting [sales contracts] bought and [financing] approved by Chrysler when they should be standing on the bus. And if it weren't for Rosa Parks, those niggers would still be standing in the back of the bus.
>
> (R. Doc. 1, at ¶28).
>
> My whole office knows that I don't buy nigger paper. I might buy some niggers at a suburban store because at least they're smart enough not to get shot while trying to buy a car in the ghetto.
>
> (R. Doc. 1, at ¶29).
>
> What, do you think we have insurance for nigger fraud? The bottom line is you just can't trust these guys and that's why I don't buy nigger paper.
>
> (R. Doc. 1, at ¶43).
>
> Well, you've got to give the nigger a little credit for shopping in the suburbs where the washrooms are cleaner and he has a better chance of getting off the lot with his new ride without getting killed . . . . "A higher class suburban 'shine' is better than those dog ass

f - - -ing south side ghetto pieces of s - - t . . . . To be honest with you, I'd prefer that you not send me one f - - -ing customer from the ghetto.

(R. Doc. 1, at ¶58-59).

Everyone knows how I feel about them, including Detroit. And that's why my delinquencies [losses] are lower than everyone else's and why I run the most profitable Zone in the country – because I don't buy nigger paper.

(R. Doc. 1, at ¶62).

[N]iggers don't pay. Everyone [at Chrysler] knows they don't pay and we've got the statistics to prove it.

(R. Doc. 1, at ¶63).

You see, Chrysler Corp. [the manufacturer] doesn't mind selling cars to these niggers. But we just don't want to finance them. And where I come from, we have a different name for them: We call them 'coons.' One problem ya'll have up here is that you don't have your niggers under control. Down South, where I come from, we keep our niggers under control.

(R. Doc. 1, at ¶73).

> Well guys, what did we decide to do with Gerry's nigger deals? Ha-ha.
>
> (R. Doc. 1, at ¶104).
>
> Gerry, so we have some current and former Chrysler people who like to throw around the 'N-word.' Where does that leave us? How does that hurt you?
>
> (R. Doc. 1, at ¶106).

Throughout the proceedings, Respondent denied these statements. (R. Doc. 12).

In June 2002, a Chrysler Vice-President from Chrysler's national headquarters in Michigan came to Chicago to meet with Gorman. At that meeting, the Chrysler officer presented Gorman with a new and revised set of loan documents, including a "Master Loan Security Agreement", a Notice of Assignment, a Continuing Guaranty, and a Retail Installment Contract and Lease Program Agreement, the terms of which had been greatly altered to the benefit of Chrysler and to the detriment of Petitioners' dealerships. (R. Doc. 1, at ¶94). Gorman was told that if he did not accept the revised terms in the new loan documents, despite their unfair and one-sided nature, Chrysler would pull its financial backing for the floor plan inventory at Midlothian. (R. Doc. 1, at ¶97). Having no choice, Gorman signed the new loan documents. (R. Doc. 1, at ¶98).

Despite the new agreement, Chrysler advised Gorman that it would not provide financing for non-suburban black customers regardless of their creditworthiness. (R. Doc. 249, at 2-3). And when the Dealerships refused to cooperate with Chrysler's discriminatory racial profiling of customers, Chrysler imposed financially ruinous penalties that forced Marquette out of business and substantially harmed Midlothian. (*Id.* at 3).

Ridge filed its Verified Complaint ("Complaint") against Chrysler on February 4, 2003, alleging claims for breach of contract, tortious interference with prospective business or economic advantage, violation of the Automobile Dealers' Day in Court Act, and violation of the Illinois Motor Vehicle Franchise Act, seeking compensatory and punitive damages. (R. Doc. 1).

On January 26, 2005, Chrysler filed two motions against Ridge and Gorman in the District Court seeking sanctions for alleged false statements and failure to produce and preserve evidence. (R. Doc. 180-181). On June 14, 2005, Magistrate Judge Arlander Keys submitted his Report and Recommendation ("Report") to the District Court recommending that the court dismiss Petitioners' Complaint with prejudice and grant Chrysler's motions for sanctions. (R. Doc. 249; Appendix C, 44a-95a). Following the submission of written briefs, the parties presented oral argument on Plaintiff's Objections to District Judge Virginia M. Kendall on February 24, 2006. (R. Doc. 280). On September 6, 2006, the district court issued a Memorandum Opinion and Order ("Opinion") (R. Doc. 282; Appendix B, 10a-43a),

adopting the Report in its entirety and dismissing the Complaint with prejudice as a sanction. (R. Doc. 282, at 26).

Petitioner pursued an appeal before the Seventh Circuit, and on February 20, 2008, the Seventh Circuit affirmed the decision of the District Court dismissing Petitioners' claims as a sanction. Finally, on March 17, 2008, the Seventh Circuit issued an Order denying Petitioners' Petition for Rehearing With Suggestion For Rehearing *En Banc*.

REASONS FOR GRANTING THE PETITION

This case presents significant issues relating to the appropriate standard to be applied in determining whether a discovery sanction should be imposed. The Seventh Circuit in this case imposed a "preponderance of the evidence" standard in determining whether the dismissal of a civil action as a sanction was appropriate, while a second panel of the Seventh Circuit issued a separate decision, two days thereafter, in the case styled *Ty, Inc. v. Softbelly's, Inc.*, 517 F.3d 494 (7th Cir. 2008), applying the more stringent "clear and convincing evidence" standard in determining whether a discovery sanction was appropriate.

Further, the Seventh Circuit's decision in *Ridge* expressly rejects the Seventh Circuit's previous precedent governing the applicable standard governing a sanction, as set forth in *Maynard v. Nygren*, 332 F.3d 462 (7th Cir. 2003), although two days later, a different Seventh Circuit panel embraced and followed this standard in *Ty, Inc. v. Softbelly's, Inc.*, 517 F.3d 494 (7th Cir. 2008).

Even more troubling than the irreconcilable conflict among the Seventh Circuit decisions addressing the issue, is the conflict between the Seventh Circuit's decision in this case and the decisions of five (5) of the other Circuits. The First, Second, Third, Eighth and D.C. Circuits have determined that when reviewing a sanction such as dismissal of a lawsuit, the appropriate standard of proof is clear and convincing. Certain panels of the Seventh Circuit have rejected this standard of proof, instead adopting the significantly lesser standard of the preponderance of the evidence.

This split of authority reflects diametrically opposed interpretations of the appropriate standard to apply in assessing a discovery sanction. With regard to the issue presented, whether a discovery sanction is appropriate is not governed by a single substantive legal consideration, but by the propriety of venue in a Court of the Seventh, First, Second, Third, Eighth or D.C. Circuits as well as within the Seventh Circuit, the fortuity of the panel to whom the case is assigned. In other words, geographic and temporal happenstance, rather than a consistently applied rule of law, informed by reasoned legal analysis and principles of fairness and justice, controls the question of whether a discovery sanction will be imposed. Final binding resolution of the issue by this Court is the only manner in which this manifestly unacceptable situation may be rectified.

In addition, absent review and reversal by this Court, the incorrect determination by the Seventh Circuit of the standard applied in imposing a discovery sanction will lend further confusion to an already convoluted legal analysis. Accordingly, review by this

Court is also necessary to clarify the propriety of the imposition of discovery sanctions in similar circumstances.

I. THE SEVENTH CIRCUIT'S INCORRECT DETERMINATION THAT THE STANDARD TO BE USED IN ASSESSING A DISCOVERY SANCTION IS THE PREPONDERANCE OF THE EVIDENCE, RATHER THAN CLEAR AND CONVINCING EVIDENCE, CONFLICTS WITH TWO OTHER DECISIONS OF THE SEVENTH CIRCUIT AS WELL AS DECISIONS OF THE FIRST, SECOND, THIRD, EIGHTH AND D.C. CIRCUITS ON THE SAME ISSUE.

A. A Conflict Exists Between The Standard Imposed By The Seventh Circuit In *Ridge* And The Standard Imposed By The First, Second, Third, Eighth and D.C. Circuits.

In several decisions issued by the First, Second, Third, Eighth and the D.C. Circuits, the respective courts found that dismissal of a case as a sanction must be supported by clear and convincing evidence, a heightened standard, as opposed to the preponderance of the evidence standard applied by the Seventh Circuit in *Ridge*.

In *Aoude v. Mobil Oil Corporation*, 892 F.2d 1115 (1st Cir. 1989), the First Circuit reviewed the dismissal of a complaint resulting from a purported "fraud on the court". The First Circuit found that dismissal of an action resulting from a fraud on the court must be

proven "clearly and convincingly" and that "because dismissal sounds the death knell of the lawsuit, district courts must reserve such strong medicine for instances where the defaulting party's misconduct is correspondingly egregious." *Aoude*, 892 F.2d at 1118 (internal citations omitted). The Court went on to state that dismissal "is an extreme remedy, and should not lightly be engaged." *Id.*

Similarly, the Second Circuit in *Mickle v. Morin*, 297 F.3d 114, 125-126 (2nd Cir. 2002), stated that "an award of sanctions under the court's inherent power must be based on clear evidence and must be accompanied by a 'high degree of specificity in the factual findings . . . .'" After reviewing the district court record, the Second Circuit vacated the order dismissing the action as a sanction and remanded the case for new trial.

The Eighth Circuit also addressed the issue of fraud on the court and stated, "[a] finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself . . . and must be supported by clear, unequivocal and convincing evidence." *Pfizer, Inc. v. International Rectified Corp, et al.*, 538 F.3d 180, 195 (8th Cir. 1976). The court in *Pfizer* reversed a district court's grant of summary judgment as a sanction for withholding documents in discovery.

Finally, in *Shepherd v. American Broadcasting Companies, Inc.*, 62 F.3d 1469 (D.C. Cir. 1995), the D.C. Circuit was presented with an appeal from an order entering a default judgment against the defendant for non-compliance with discovery orders. In its opinion, the D.C. Circuit specifically addressed Federal Rule of Civil

Procedure 37 stating, "This rule permits the court to use such orders as are just to sanction a party that fails to obey an order to provide or permit discovery." *Id.*, at 1474 (internal citations omitted). The Court went on to conclude that a "heightened standard of proof" is a necessary prerequisite to the imposition of a dismissal sanction, stating:

> Because of the fundamental importance of trying cases on their merits, and, . . . because other sanctions can both deter and correct litigation misconduct when proven by only a preponderance of the evidence, the social disutility of granting a trial on the merits to a party guilty of litigation misconduct is less than the social disutility of denying a trial to a party innocent of such misconduct.

Id. at 1476. The Court found that misconduct that warrants dismissal as a sanction must be proven by a standard of proof higher than preponderance of the evidence, namely, clear and convincing evidence, and that this level of proof is "particularly appropriate because most inherent power sanctions, including default judgments are inherently punitive." *Id.* at 1476.

The Seventh Circuit's decision in this case constitutes a clear departure by the Seventh Circuit from the higher "clear and convincing" standard of proof embraced by the other Circuits. The Seventh Circuit's reliance on the lesser "preponderance of the evidence" standard establishes an irreconcilable split of authority amongst the circuits that requires review by this Court to resolve the confusion and to provide clear and

definitive direction as to which standard is appropriate. Without intervention by this Court, parties will be left with significantly different results in similar circumstances resolved not on the merits of their claims but on geographic fortuity.

B. The Seventh Circuit's Application Of A Preponderance Of The Evidence Standard Of Proof Required To Impose Sanctions In *Ridge* Conflicts With Other Decisions Of The Seventh Circuit Applying A Clear and Convincing Standard of Proof To The Decision To Impose Sanctions.

Both *Ridge* and *Ty* are cases in which a party was severely sanctioned. In *Ridge*, Petitioners' case was dismissed as a sanction principally because Petitioners' CEO, Gerald Gorman ("Gorman"), was perceived to have deceived the trial court.[2] *Ridge*, 516 F.3d at 624-625. In *Ty*, the plaintiff prevailed at trial, but because the trial court determined that Ty had tampered with a prospective opposition witness, it held that forfeiture of the jury's award of $713,000 in damages to Ty was the appropriate sanction. *Ty*, 517 F.3d at 496.

The common issue addressed by the Court in both *Ridge* and *Ty* was the appropriate evidentiary standard governing proof of misconduct necessary to support the

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[2] Because the sanctions imposed in this case arise from the Seventh Circuit's conclusion that Gorman had failed to cooperate in the discovery process and also had deceived the trial court, *Ridge* implicates both Rule 37 and the court's inherent authority to sanction a litigant, even though the Seventh Circuit was silent on this point.

imposition of a discovery sanction on a party for the misconduct. Notwithstanding an earlier Seventh Circuit opinion in *Maynard v. Nygren*, 332 F.3d 462 (7th Cir. 2003), which held that "considering the severe and punitive nature of dismissal as a discovery sanction, a court must have clear and convincing evidence of willfulness, bad faith or fault before dismissing a case" (*id.* at 468), the *Ridge* panel, concluded that the standard required to support dismissal as a sanction is the preponderance of the evidence standard. In reaching this conclusion, the Seventh Circuit cited *Grogan v. Garner*, 498 U.S. 279 (1991), and *Herman & MacLean v. Huddleston*, 459 U.S. 375 (1983), for the proposition that "heightened burdens of proof do not apply in civil cases unless a statute or the constitution so requires." *Id.* That statement, however, fails to acknowledge this Court's instruction in *Herman* that "[w]here congress has not prescribed the appropriate standard of proof and the constitution does not dictate a particular standard, we must prescribe one." *Herman*, 459 U.S. at 389.

Following that instruction, this Court's analysis in *Herman* led it to conclude that a preponderance of the evidence standard applies in Section 10(b) securities fraud actions because "[t]he interests of defendants in a securities case do not differ qualitatively from the interests of defendants sued for violations of other federal statues such as the antitrust or civil rights laws, for which proof by a preponderance of the evidence suffices." *Id.* at 390. This Court thus declined "to depart from the preponderance-of-the-evidence standard generally applicable in civil actions." *Id.*

Eight years later, in *Grogan v. Garner*, 498 U.S. 279 (1991), this Court once again determined the applicable standard in a matter wherein neither Congress nor the Constitution prescribed one. There, the issue was what standard applied to reach a finding of nondischargeability of a debt under Section 523 of the Bankruptcy Code given that the statute itself was silent on the issue. This Court followed *Herman*'s lead in prescribing the appropriate standard where neither Congress nor the Constitution did, holding that "[b]ecause the preponderance-of-the evidence standard results in a roughly equal allocation of the risk of error between litigants, we presume that this standard is applicable in civil actions between private litigants unless 'particularly important individual interests or rights are at stake.'" *Grogan*, 498 U.S. at 286.

Importantly, the Seventh Circuit in *Maynard* employed the analysis of the individual interests or rights at stake articulated by this court in *Herman* and *Grogan* and concluded that, "considering the severe and punitive nature of dismissal as a discovery sanction, a court must have clear and convincing evidence of willfulness, bad faith or fault before dismissing a case."[3] *Maynard*, 332 F.3d at 468. In so doing, the Court looked at cases from other circuits that reached the same conclusion. *Id.* (citing *Shepard v. American*

[3] Although the *Maynard* Court's analysis focused primarily on imposition of sanctions under Rule 37, that Court also addressed a court's inherent authority to impose sanctions, concluding that inherent authority sanctions, like Rule 37 sanctions, must be supported by a finding of willfulness. *Maynard*, 332 F.3d at 470. Consequently, the discussion herein applies equally to both species of sanctions.

Broadcasting Companies, Inc., 62 F.3d 1469 (D.C. Cir. 1995); *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115 (1st Cir. 1989); *Pfizer, Inc. v. Int'l Rectifier Corp.*, 538 F.2d 180 (8th Cir. 1976); and *Scholastic, Inc. v. Stouffer*, 21 F. Supp. 2d 425 (S.D.N.Y. 2002)). In *Maynard*, the Seventh Circuit noted:

> [t]his holding brings the evidentiary standard applicable here into line with the standard applicable to justify dismissal for delay, contumacious conduct or failed sanctions. In all circumstances, to justify dismissal as a sanction, there must be clear and convincing evidence.

Maynard, 332 F.3d 469, n.3.[4]

In *Ridge*, the Seventh Circuit panel's reference to *Grogan* and *Herman* as support for the conclusion that the appropriate standard when a court is considering dismissal as a sanction is preponderance of the evidence ignores *Herman*'s and *Grogan*'s fact-specific analysis balancing the relative interests of the parties. Inexplicably, that panel summarily rejected *Maynard* as stating the appropriate standard, and went on to embrace a different standard than that approved in Maynard.

The Seventh Circuit in *Ty*, however, acknowledged that *Maynard* is "[t]he principal case in this circuit"

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[4] The Seventh Circuit in *Wade v. Soo Line Railroad Corp.*, 500 F.3d 559 (7th Cir. 2007), questioned whether *Maynard* should be overruled based on this Court's decisions in *Grogan* and *Herman*, but declined to do so.

stating the appropriate standard. However, because it viewed *Maynard* as involving Rule 37 violations and not a court's inherent authority to sanction misconduct,[5] the *Ty* Court did not cite *Maynard* for the appropriate standard. Instead, following the *Grogan/Herman* fact-specific analysis, the Seventh Circuit in *Ty* pointed to the cases cited in *Maynard* for the proposition that "in the absence of a statute or rule, the exercise of judicial authority should be governed by traditional common law or equitable principles, such as the familiar principle that fraud must be proved by clear and convincing evidence." *Ty*, 517 F.3d at 499.

The Seventh Circuit in *Ty* also concluded that regardless of the standard applicable in that case, the constitution "imposes (in the Eighth Amendment's cruel and unusual punishments clause) limitations on the severity of punishment, so the permissible level of sanctions for misconduct in litigation, except when prescribed by statute or rule, is, even when there is no heightened burden of proof, limited by notions of proportionality." *Ty*, 517 F.3d at 499.

C. The Seventh Circuit's Decision In *Ridge* Disregards The Accepted Analysis Required To Ensure That The Sanction Imposed Is Proportional To The Wrongful Conduct.

A manifest conflict exists between the Seventh Circuit's decisions in *Ridge* and *Ty* for the additional reason that, in *Ridge*, the Seventh Circuit disregarded the concept of proportionality. *Ty*, citing to *Allen v.*

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[5] See note 2, *supra*.

Chicago Transit Authority, 317 F.3d 696, 703 (7th Cir. 2003), among other cases, concluded that imposition of a sanction that amounted to nine times the amount necessary to compensate the victim was too harsh. *Ty*, 517 F.3d at 499. *Allen* is particularly instructive here because in that case, as in the present case, the issue was whether dismissal of a party's case was an appropriate sanction. In *Allen*, after concluding that one of the plaintiffs, Earnest Leonard, had perjured himself during his deposition, the district court ordered Leonard to pay the defendant $4,000 in ten installments of $400. *Allen*, 317 F.2d at 702. Leonard was late in making the first payment, which resulted in a defense motion to dismiss his suit as a sanction. *Id.* The motion was denied after he made the payment. By the time the case reached the Court of Appeals, however, Leonard was $1,800 in arrears. *Id.* The defendant thus asked the Seventh Circuit to dismiss his appeal as a sanction. *Id.*

Although the Seventh Circuit affirmed dismissal of Leonard's claims on their merits, it noted that dismissal as a sanction for perjury under the facts before it might have been too harsh. *Allen*, 317 F.3d at 702-703. Facts a court should consider under such circumstances include the conduct of the opposing party ("suppose the opposing litigant had perjured himself as well") and whether the perjury affected the course of the litigation. *Id.*

The Seventh Circuit in *Ridge*, however, took none of *Allen*'s proportionality factors into account and instead, citing to *Ball v. Chicago*, 2 F.3d 752 (7th Cir. 1993), accepted the "facts" as set out by the magistrate judge and adopted by the district court without reference to

the countervailing evidence in the record,[6] and concluded that Gorman had "deceiv[ed] Judge Andersen to obtain an order worth at least $500,000 to the dealerships." *Ridge*, 516 F.3d at 626. The Court thus affirmed dismissal of Petitioners' claims.

Consideration of whether the "punishment meets the crime" also ensures that the sanction imposed is consistent with the need for courts to exercise restraint in dismissing cases for bad faith conduct. As this Court has explained, because such "powers are shielded from direct democratic controls, they must be exercised with restraint and discretion." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980). Dismissal on such a reduced standard of proof is also inconsistent with our judicial system's strong presumption in favor of adjudications on the merits. *Forman v. Davis*, 371 U.S. 178, 181-82 (1962); 5B Charles A. Wright & Arthur R. Miller, FEDERAL PRACTICE & PROCEDURE: CIVIL 3rd § 1357, at 599 & n.67 (3rd ed. 1969).

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[6] The *Ridge* panel plainly stated that "[t]he facts we are reciting come from Magistrate Judge Keys's findings, which District Judge Kendall approved after the case was transferred to her." *Ridge*, 516 F.3d at 624.

II. THE SEVENTH CIRCUIT'S TREND TOWARDS DISMISSING CASES AS A SANCTION, RATHER THAN ENTERING A LESSER SANCTION AND ALLOWING THE CASE TO PROCEED ON THE MERITS, PRESENTS AN IMPORTANT FEDERAL QUESTION ON THE INTERPRETATION OF THE FEDERAL RULES OF CIVIL PROCEDURE.

In recent cases such as *Ridge* and *Wade*, discussed *supra*, the Seventh Circuit has affirmed a sanction against a plaintiff that has resulted in the dismissal of a plaintiff's claims. These cases effectively result in defendants using the Federal Rules of Civil Procedure as well as the court's inherent power to act as a bar to a suit on the merits in order to circumvent the judicial process, and it is becoming more and more frequently used as a defense tactic. This defense tactic is successful in that it precludes a party from going to trial on the merits, but also results in a much more serious break down of a constitutionally enriched right – adjudication by a jury of claims on their merits.

There is no question that a court must possess a certain degree of authority to police its own docket to ensure that no party is engaging in an abuse of the judicial process. The principle has best been set forth by this Court in *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991):

> Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence and

> submission to their lawful mandates. These powers are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.

However, as set forth below these powers are limited in certain respects.

Rule 37 of the Federal Rules of Civil Procedure grants a court the power to dismiss a case as a sanction for non-compliance with a discovery order. In *Societe Internationale Pour Participations Industrielles Et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 207 (D.C. 1958), this Court stated, "whether a court has power to dismiss a complaint because of noncompliance with a production order depends exclusively upon Rule 37." This Court then reviewed the sanction imposed and stated, "[t]he provisions of Rule 37 which are here involved must be read in light of the provisions of the Fifth Amendment that no person shall be deprived of property without due process of law." *Id.* at 209. Further, this Court found that "there are constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." *Id.*

Similarly, courts are vested with certain inherent powers that are used when rules alone do not provide courts with sufficient authority to protect their integrity and prevent abuses of the judicial process. It is well settled that a court may dismiss an action as a sanction.

See, Link v. Wabash Railroad Comp., 370 U.S. 626 (1962), and *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). However, when faced with dismissal as a sanction, the court must balance "the judicial system's need for an effective tool to discourage and punish misconduct with its need for appropriate restraint in imposing inherent power sanctions." *Shepherd v. American Broadcasting Companies, Inc.*, 62 F.3d 1469, 1475 (D.C. Cir. 1995). Further, as this Court stated in *Chambers*, "because of their very potency, inherent powers must be exercised with restraint and discretion." *Chambers*, 501 U.S. at 44.

Furthermore, there is a presumption in our judicial system that a resolution of a matter on the merits is preferable to a resolution based on a mere technicality. See, *Foman v. Davis*, 371 U.S. 178, 181-182 (1962). Routinely resorting to the dismissal of a case as a sanction, rather than allowing them to be adjudged on their merits, is in direct contravention of the spirit and nature of our jury system. Allowing a party to come into court with a Motion for Sanctions resulting from, for example, a statement made at a deposition, devalues the idea of impeachment at a trial on the merits and removes from the province of a jury the ability to weigh a party's credibility. The jurisprudence embraced by the Seventh Circuit's decision in this and other cases involving dismissal as a sanction invites parties to attempt to end the proceedings without regard for the merits of the cause, and while it is imperative to retain the high standard of truth and to maintain the solemnity of court proceedings, these factors must be weighed carefully against a party's Fifth Amendment right to

present his case on the merits to a jury and to have that jury make a decision based on all of the evidence presented before it.

Here, at a minimum, Petitioners were entitled to an evidentiary hearing as to the issues raised by the Respondent before the District Court rendered its decision. This Court should accept this Petition to address the strained relationship between a dismissal of a party's claims as a discovery sanction and a party's right to bring his case to trial on the merits, as well as the potential misuse of the Federal Rules of Civil Procedure to deny a party his day in Court.

CONCLUSION

For the foregoing reasons, this petition for writ of *certiorari* should be granted.

Respectfully submitted,

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